

## The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TANYA GOODMAN,

**Plaintiff,**

V.

**FIRST UNUM LIFE INSURANCE  
COMPANY and UNUM GROUP,**

## Defendants.

CASE NO. 2:21-cv-00902-BJR

**ORDER GRANTING IN PART  
PLAINTIFF TANYA  
GOODMAN'S MOTION FOR  
JUDGMENT ON THE RECORD**

This matter comes before the Court on the cross-motions for judgment on the record under Federal Rule of Civil Procedure 52 by Defendants First Unum Life Insurance Company and Unum Group (collectively, “Unum”), Dkt. No. 31, and Plaintiff Tanya Goodman, Dkt. No. 33, and on Goodman’s motion to supplement the record. Dkt. No. 34. The Court GRANTS IN PART Goodman’s motion for judgment on the record, GRANTS her motion to supplement the record, and DENIES IN PART Unum’s motion for judgment on the record. The Court hereby REMANDS the matter to Unum to determine whether Goodman can “perform the duties of any gainful

1 occupation for which [she is] reasonably fitted by education, training or experience,” pursuant to  
 2 the relevant benefit plan. Dkt No. 18-11 at 16.

3 **BACKGROUND**

4 Goodman claims that Section 502(a)(1)(B) of the Employee Retirement Income Security  
 5 Act (“ERISA”), 29 U.S.C. § 1132(a)(1)(B), warrants judgment against Unum for failure to pay her  
 6 disability insurance benefits to which she was entitled under her employer’s benefit plan (“the  
 7 Plan”). Dkt. No. 1 at 4. Goodman also claims that Unum violated the terms of the Plan and seeks  
 8 an injunction under 29 U.S.C. § 1132(a)(3) “compelling Unum to correct its claims-handling  
 9 policies, practices, training, and procedures, together with any other declaratory or equitable relief  
 10 the Court deems appropriate.” Dkt. No. 1 at 5.

11 “Under ERISA, the proper standard of review of a plan administrator’s benefits denial is  
 12 *de novo* unless the plan grants discretionary authority to the administrator.” *Mirick v. Prudential*  
 13 *Ins. Co. of Am.*, 100 F. Supp. 3d 1094, 1096 (W.D. Wash. 2015) (citing *Firestone Tire & Rubber*  
 14 *Co. v. Bruch*, 489 U.S. 101, 115 (1989)). The parties have stipulated to de novo review. Dkt. No.  
 15 13 at 2. The court accepts the parties’ stipulation, *see Rorabaugh v. Cont'l Cas. Co.*, 321 F. App’x  
 16 708, 709 (9th Cir. 2009), conducts a trial of this matter under Rule 52 based on the administrative  
 17 record considered by Unum, and issues the findings of fact and conclusions of law as set forth  
 18 below.

19 **GOODMAN’S MOTION TO SUPPLEMENT THE RECORD**

20 As an initial matter, the Court addresses Goodman’s motion to supplement the  
 21 administrative record to add a June 24, 2022 decision by an administrative law judge (“ALJ”) at  
 22 the Social Security Administration (“SSA”), granting her Social Security disability benefits. Dkt.  
 23 No. 34 at 1; *see* Dkt. No. 34-4 (2022 SSA decision). The Court has discretion to expand the record  
 24 where “additional evidence is necessary to conduct an adequate *de novo* review of the benefit

1 decision.” *Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan*, 46 F.3d 938, 944  
 2 (9th Cir. 1995); *see also Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1094 (9th Cir. 1999). The  
 3 following circumstances should be considered when deciding whether supplementing the  
 4 administrative record is necessary:

5 [C]laims that require consideration of complex medical questions or issues  
 6 regarding the credibility of medical experts; the availability of very limited  
 7 administrative review procedures with little or no evidentiary record; the necessity  
 8 of evidence regarding interpretation of the terms of the plan rather than specific  
 9 historical facts; instances where the payor and the administrator are the same entity  
 and the court is concerned about impartiality; claims which would have been  
 insurance contract claims prior to ERISA; and circumstances in which there is  
 additional evidence that the claimant could not have presented in the administrative  
 process.

10 *Opeta v. Northwest Airlines Pension Plan for Cont. Emps.*, 484 F.3d 1211, 1217 (9th Cir. 2007)  
 11 (citation omitted).

12 The *Opeta* factors support expanding the record to include the 2022 SSA decision. The  
 13 SSA’s prior decision in 2020 already forms part of the administrative record, Dkt. No. 17-6 at 38–  
 14 51, and the 2022 SSA decision results from this Court’s decision reversing and remanding the  
 15 2020 decision. *See Tanya G. v. Comm’r of Social Security*, C21-0530-SKV, 2022 WL 35494, at  
 16 \*1 (W.D. Wash. Jan. 3, 2022). The 2022 SSA decision was issued after the administrative record  
 17 was filed, so it could not have been included in it. And this case certainly requires consideration  
 18 of complex medical questions and issues regarding the credibility of medical experts, which are  
 19 matters that the 2022 SSA decision speaks to. In light of the record and circumstances in this case,  
 20 the Court grants Goodman’s motion to supplement the record with the 2022 SSA decision. Dkt.  
 21 No. 34-4.

22 The Court next turns to the parties’ cross-motions for judgment on the record.

## FINDINGS OF FACT

#### **A. Goodman's Employment and the Terms of Coverage Provided Under the Plan**

(1) Goodman worked as a Vice President Group Account Director for Aegis Media Americas, Inc.'s iProspect division. Dkt. No. 16-10 at 24, 27. She held an executive leadership role where she was responsible for the strategic management of clients' digital marketing programs and managed a \$6,000,000 revenue stream. Dkt. No. 16-7 at 39; Dkt. No. 16-19 at 5. She handled accounts for companies such as T-Mobile and led a team of 20 employees. Dkt. No. 16-6 at 1; Dkt. No. 16-7 at 39. Before she requested disability benefits, her annual income was \$202,878. Dkt. No. 18-12 at 28.

(2) Goodman participated in her employer’s ERISA plan, the Aegis Media Americas, Inc. Plan. Dkt. No. 7 at 1–2; Dkt. No. 16 at 1. The Plan includes a disability insurance policy written by First Unum Life Insurance Company. Dkt. No. 18-11 at 1–42. Goodman was covered under the Plan’s short-term disability (“STD”) benefits, which are paid for up to 26 weeks. Dkt. No. 18-12 at 28; Dkt. No. 18-17 at 15. Goodman was also covered under the Plan’s long-term disability (“LTD”) benefits, which begin after a Plan participant’s STD benefits end. Dkt. No. 18-11 at 4–5.

(3) The Plan defines disability as follows:

You are disabled when Unum determines that:

- you are limited from performing the material and substantial duties of your regular occupation due to your sickness or injury; and
  - you have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury.

After 24 months of payments, you are disabled when Unum determines that due to the same sickness or injury, you are unable to perform the duties of any gainful occupation for which you are reasonably fitted by education, training or experience.

You must be under the regular care of a physician in order to be considered disabled.

1 Dkt. No. 18-11 at 16 (emphasis omitted). The Plan thus identifies two different standards: one that  
 2 applies up to 24 months of payments, and one that applies after 24 months of payments. Unum did  
 3 not evaluate Plaintiff's disability claim under the Plan's more stringent "any gainful occupation"  
 4 standard because it determined that Goodman was unable to meet the less stringent "regular  
 5 occupation" standard. Dkt. No. 31 at 3 n.5. The Plan also limits the maximum benefits available  
 6 for mental illness to 24 months. Dkt. No. 18-11 at 22.

7 (4) Unum acts as the plan administrator for deciding LTD claims. *Id.* at 38. The key terms  
 8 in the Plan's definition of disability are defined as follows:

9 "Sickness" means "an illness or disease;"

10 "Injury" means "a bodily injury that is the direct result of an accident and not related  
 to any other cause;"

11 "Limited" means "what you cannot or are unable to do;"

12 "Material and Substantial Duties" mean duties that "are normally required for the  
 performance of your regular occupation; and cannot be reasonably omitted or  
 modified;"

13 "Regular Occupation" means "the occupation you are routinely performing when  
 your disability begins. Unum will look at your occupation as it is normally  
 performed in the national economy, instead of how the work tasks are performed  
 for a specific employer or at a specific location;"

14 "Mental Illness" means "a psychiatric or psychological condition classified in the  
 Diagnostic and Statistical Manual of Mental Health Disorders (DSM), published  
 by the American Psychiatric Association, most current as of the start of a disability.  
 Such disorders include, but are not limited to, psychotic, emotional or behavioral  
 disorders, or disorders relatable to stress."

19 *Id.* at 30–32. The Plan also defined "Regular Care" as follows:

- 20 - you personally visit a physician as frequently as is medically required, according  
 to generally accepted medical standards, to effectively manage and treat your  
 disabling condition(s); and
- 21 - you are receiving the most appropriate treatment and care which conforms with  
 generally accepted medical standards, for your disabling condition(s) by a  
 physician whose specialty or experience is the most appropriate for your disabling  
 condition(s), according to generally accepted medical standards.

24 *Id.* at 31.

1       **B. Goodman's Accident and Initial Treatment**

2                     (5) On January 9, 2018, Goodman was rear-ended by another vehicle while driving her son  
 3 to preschool. Dkt. No. 16-3 at 49. According to her providers' reports, the accident caused her  
 4 head to strike the headrest, and she thought that she may have also struck her face, although she  
 5 did not recall it. *Id.* at 4, 49. She reported experiencing dizziness, blurred vision, headache, and  
 6 some ringing in her ears. *Id.* at 4, 49. She also believed that she may have briefly lost  
 7 consciousness. *Id.* at 49, 62. At the time of the accident, the other vehicle was estimated to be  
 8 moving at 30 miles per hour, Goodman was wearing a seatbelt, the airbags did not deploy, and she  
 9 did not call the police or emergency services. *Id.* at 3-4. Her vehicle remained drivable, and she  
 10 drove herself from the scene. *Id.* at 4, 15.

11                   (6) Goodman first sought treatment from her chiropractor the day after the accident,  
 12 January 10, 2018. *Id.* at 3. In a report dated March 9, 2018 summarizing the visit, the chiropractor  
 13 noted Goodman's subjective reports of injuries of her head and back including hitting her head,  
 14 tightness and discomfort in her neck and head, and dizziness, but no loss of consciousness. *Id.* at  
 15 3-4. The chiropractor's report noted that, "although subjective complaints are important,"  
 16 recommendations for chiropractic treatment "need to be predicated upon the presence of relevant  
 17 objective examination findings," and the chiropractor was "unable to objectively substantiate the  
 18 necessity for additional chiropractic treatment." *Id.* at 6. Other symptoms Goodman reported to  
 19 various providers included forgetfulness, tingling and/or drooping on the right side of her face,  
 20 nausea, and vomiting. *See, e.g., id.* at 7-8 (reporting forgetfulness, nausea, and vomiting at a visit  
 21 with her chiropractor on March 26, 2018); *id.* at 31 (noting numbness and drooping on the right  
 22 side of her face on January 11, 2018). On a later visit to the chiropractor on March 26, 2018, she  
 23 indicated that these symptoms became worse with exposure to light. *Id.* at 12. Following this visit,  
 24 Dr. Garrett Hyman at Emerald Sports & Spine Medicine reported that he "continue[d] to suspect

1 a significant portion of [Goodman's] symptoms relate to 'adrenaline overload' from the  
2 combination of her recent [accident] trauma as well as various psychosocial stressors." *Id.* at 7, 10.  
3 He added that he did "not think she is likely to benefit from a focus on medications, injections or  
4 surgery for her spinal or shoulder pain." *Id.* at 10.

5 (7) On January 11, 2018, Goodman visited her primary care doctor, who told her that she  
6 likely had whiplash and a concussion. *Id.* at 31. The doctor referred her for an MRI and  
7 recommended that she rest. *Id.* Two days later, Goodman visited an emergency room where she  
8 received an MRI and was diagnosed with "[c]oncussion without loss of consciousness." *Id.* at 27.  
9 She reported that she had dizziness that was so severe that she had to lean onto walls for support,  
10 and that earlier on the day of the visit the vision in her right eye seemed like it had a "gray cotton  
11 mesh" over it, although that symptom had already resolved. *Id.* at 62. Her MRI results were normal.  
12 *Id.* at 29. The ER doctor concluded that she had a "normal neuro exam" and that her symptoms  
13 "likely represent[ed] post-concussive syndrome." *Id.* at 64; *see id.* at 68 (describing Goodman as  
14 having "classic post concussive symptoms").

15 (8) On February 19, 2018, Goodman consulted optometrist Dr. Rachael Barker and  
16 received a vision evaluation. Dkt. No. 16-2 at 41. The vision assessment found that Goodman  
17 suffered from severe convergence insufficiency, intermittent alternating exotropia, reduced depth  
18 perception, accommodative insufficiency, and astigmatism. *Id.* Dr. Barker recommended single  
19 vision lenses, UV protection, visual breaks of 60 seconds for every 10 minutes of near work,  
20 limiting total daily screen time and small/near screens, and warmer color tones in the workspace.  
21 *Id.* Dr. Barker strongly recommended weekly vision therapy "since visual deficits are severely  
22 impacted," although she stated that she "would first like to see how [Goodman] progresses with  
23 glasses and over [time] with other therapeutic interventions." *Id.*

(9) On March 27, 2018, Goodman was examined by neurologist Dr. Mark Fishel. Dkt. No. 16-3 at 49–53. Goodman reported symptoms similar to those she had reportedly previously, including headache, dizziness, blurred vision, soreness in her neck and upper back, and light sensitivity. *Id.* at 49–50. She also reported that she was irritable, anxious, and fatigued, and that she had pain in her right foot. *Id.* at 49, 51. At this time, she was pursuing several forms of treatment including hyperbaric oxygen treatment, acupuncture, massage, and craniosacral therapy. *Id.* at 49. She was also taking selenium, probiotics, CBD/THC, and Zofran. *Id.* at 50. Dr. Fishel identified her as having a “[s]low recovery process” and a “[p]ossible complex migraine episode.” *Id.* at 52. Dr. Fishel examined Goodman’s cranial nerves related to vision and found them to be normal. *Id.* at 51. Specifically, he found that, with respect to cranial nerve II, “[v]isual fields are full to confrontation and finger counting” and “[f]undoscopic exam is normal.” *Id.* With respect to cranial nerves III, IV, and VI, he found “EOMI [extra ocular movement intact], PERRL [pupils equal and reactive to light], no ptosis [drooping eyelids], nystagmus [rapid uncontrollable eye movement]. NI saccades and smooth pursuits.” *Id.* Dr. Fishel prescribed her Flexeril, a muscle relaxant, and suggested considering additional medications for headache prevention. *Id.* at 53. He said that Goodman “[n]eed[ed] to consider taking a leave of absence from work to focus on recovery.” *Id.* Dr. Fishel also recommended a repeat MRI due to Goodman’s continued report of decreased sensation on the right side of her face. *Id.* at 52. She received this second MRI on March 29, 2018, and it also came out normal. *Id.* at 58–59.

20 (10) Goodman had an initial consultation with neuropsychologist Dr. Martha Glisky on  
21 April 19, 2018. Dkt. No. 16-9 at 42. She again described a set of symptoms similar to those she  
22 had described to previous providers she had consulted, including sensitivity to light, ongoing  
23 nausea and vomiting for several weeks, headaches, and numbness and drooping on the right side  
24 of her face (which resolved shortly afterward). *Id.* 42–43. She reported that exposure to certain

1 types of light would trigger symptoms including nausea, vomiting, and feeling shaky. *Id.* at 43.  
 2 She also described difficulty with memory and feeling that she was “not as sharp” as she was prior  
 3 to the accident. *Id.* She said that she was working at 50-60% of the level she worked at before the  
 4 accident and described feeling irritable, indifferent, depressed, and hopeless at times. *Id.* Dr. Glisky  
 5 reported that Goodman “has continued to try to work,” but that she and Goodman “discussed  
 6 options that included taking some time off work or reducing her work hours to allow more time  
 7 and space for treatment and continued healing.” *Id.* at 44. Dr. Glisky assured Goodman “that most  
 8 individuals will recover cognitively from this type of injury,” and mentioned that a number of  
 9 other stressors, including custody issues and her special needs son, were “likely contributing to a  
 10 longer recovery time and to some of the persisting symptoms.” *Id.*

11       (11) Goodman had a follow-up visit with Dr. Glisky on May 8, 2018. *Id.* at 39. In Dr.  
 12 Glisky’s report on the visit, she noted that Goodman had started physical therapy and massage and  
 13 attended some vision therapy, and that she had been recommended for speech therapy and  
 14 vestibular physical therapy. *Id.* at 40. Dr. Glisky noted that Goodman was “concerned about her  
 15 ability to continue working” and that her providers “are also suggesting taking some time off.” *Id.*  
 16 at 41. She said that Goodman’s “current contract ends at the end of May and seems to make sense  
 17 in terms of when to break.” *Id.* Dr. Glisky concluded that “taking a break from work would likely  
 18 be beneficial for [Goodman’s] continued healing and her own mental health,” and that it would  
 19 “be helpful for her to have three months to focus on her own recovery.” *Id.* Dr. Glisky declined to  
 20 conduct a neuropsychological evaluation at that time, but recommended considering it if Goodman  
 21 continued to have difficulties after the therapies she was already planning. *Id.*

22 **C. Goodman’s Disability Claim**

23       (12) Goodman continued working after the accident, although she missed some days of  
 24 work each week. Dkt. No. 16-1 at 16. She requested STD benefits on April 30, 2018. Dkt. No. 18-

12 at 2, 21. Unum approved her request for STD benefits on June 5, 2018, with an effective start  
2 date of May 31, 2018. Dkt. No. 18-13 at 57. Unum found that Goodman was disabled based on  
3 post-concussion syndrome caused by her motor vehicle accident. Dkt. No. 18-12 at 10. In deciding  
4 to grant STD benefits, Unum considered a report from Dr. Fishel stating that Goodman could not  
5 perform her job due to visual impairments, headaches, and light sensitivity, and that she should  
6 avoid working through July 1, 2018. Dkt. No. 18-12 at 11, 36–37. Goodman stopped working on  
7 May 30, 2018 and received STD benefits from May 31, 2018 to July 1, 2018. Dkt. No. 18-13 at  
8 57. Unum later approved Goodman for the full 26-week duration of STD benefits, which lasted  
9 until November 28, 2018. Dkt. No. 18-17 at 15.

10 (13) After Goodman’s STD benefits were exhausted, Unum began investigating whether  
11 she was entitled to LTD benefits on October 29, 2018. Dkt. No. 18-17 at 15. On January 31, 2019,  
12 Unum notified Goodman of its conclusion that she was disabled and entitled to LTD benefits as  
13 of November 29, 2018. Dkt. No. 47 at 47, 51. Unum found Goodman disabled due to her  
14 headaches. *Id.* at 51. Unum continued paying LTD benefits until December 16, 2020, when it  
15 ceased benefits on the grounds that Goodman was no longer disabled. Dkt. No. 17-6 at 11–14.

16 **D. Post-Claim Treatment and Medical Evaluations**

17 (14) Goodman continued receiving treatment after the commencement of her STD and  
18 LTD benefits. Goodman continued meeting with Dr. Fishel approximately once a month from May  
19 to October 2018. *See* Dkt. No. 16-3 at 54 (May 15, 2018 visit); Dkt. No. 18-15 at 27 (June 29,  
20 2018 visit); *id.* at 66 (July 31, 2018 visit); Dkt. No. 16-1 at 80 (August 21, 2018 visit); Dkt. No.  
21 16-2 at 2 (September 13, 2018 visit); *id.* at 6 (October 25, 2018 visit). Dr. Fishel identified her as  
22 having “[c]ontinued post-concussive symptoms” on May 15, 2018, and recommended Gabapentin  
23 and physical, cognitive, and vision therapy. Dkt. No. 16-3 at 56. Dr. Fishel treated her with a  
24 greater occipital nerve block on August 21, 2018 to help with her post-concussive visual

1 symptoms. Dkt. No. 16-2 at 1. Although she had a good response to the treatment, she experienced  
2 increased nausea. *Id.* at 17. On September 13, 2018, Dr. Fishel began treating her with Botox. *Id.*  
3 at 5. Goodman reported that the Botox helped decrease the frequency and intensity of her  
4 symptoms. *Id.* at 17; *see also* Dkt. No. 18-16 at 51 (describing improvement of symptoms with  
5 nerve blockers and Botox). Goodman also commenced vision therapy with Dr. Barker, although  
6 she discontinued the therapy because she could not tolerate the driving. Dkt. No. 16-15 at 22.

7 (15) On June 3 and 6, 2019, Goodman returned to Dr. Glisky for a neuropsychological  
8 evaluation. *See* Dkt. No. 47 at 91–92; 16-11 at 1–8. Dr. Glisky found that Goodman “appeared to  
9 put forth good effort throughout the evaluation” that she “passed the majority of the formal and  
10 embedded measures of effort, motivation, and performance validity,” and that she “met validity  
11 standards.” *Id.* at 3. Her IQ score was average but she scored as mildly impaired on a test of  
12 attentional speed, and moderately impaired when required to divide her attention on additional  
13 tasks. *Id.* Her overall processing speed was average, but her overall measures of learning and  
14 memory were “below expectation.” *Id.* She was intact on some measures of executive function,  
15 but her abstract reasoning performance was reduced. *Id.* at 5. Dr. Glisky concluded that Goodman  
16 met the criteria for Unspecified Neurocognitive Disorder “with evidence of reduced cognition in  
17 several areas,” and met criteria for Unspecified Depressive Disorder and Unspecified Anxiety  
18 Disorder. *Id.* Dr. Glisky concluded that Goodman’s cognitive difficulties were “likely due to [a]  
19 combination of factors including the injury to her brain, combined with the overall traumatic event  
20 and consequences, as well as her ongoing stress and psychological distress.” *Id.* at 6. Dr. Glisky  
21 recommended medical follow up for her physical symptoms, including with a neuroendocrine  
22 specialist, as well as regular psychotherapy for her psychological disorders. *Id.* She also  
23 recommended that Goodman “not return to her previous level of occupation functioning” because  
24 her “cognitive, physical, and emotional symptoms will make it very difficult for her to successfully

1 perform her job, and the stress will not be good for her continued recovery.” *Id.* Dr. Glisky  
2 recommended that she take another three to six months of leave. *Id.* Dr. Glisky also recommended  
3 that Goodman pursue cognitive remediation therapy at some point in the future but to “prioritize  
4 her physical and emotional healing” first. *Id.*

5 (16) On September 18, 2019, Goodman took a Community Safety Evaluation at Evergreen  
6 Hospital and was diagnosed with “visual perceptual impairment.” Dkt. No. 16-15 at 22. She  
7 presented wearing sunglasses that she reported wearing “pretty much all the time.” *Id.* She reported  
8 that her symptoms increased dramatically with freeway and longer distance driving as well as  
9 bright light, headlights, and rain. *Id.* The hospital found that she suffered from convergence  
10 insufficiency, recommended that she resume vision therapy, and suggested that she “should  
11 limit/avoid driving freeways, long distances, during heavy traffic times, adverse weather  
12 conditions, and limit radio or conversations while driving.” *Id.* at 22–23. It also found that she  
13 demonstrated “mild cognitive impairment . . . most likely related to reports of visual fatigue which  
14 [consequently] increases [headache] pain.” *Id.* at 23. Goodman reported experiencing nausea and  
15 headaches during the testing. *Id.* at 22.

16 (17) Goodman was evaluated for visual disability by optometrist Dr. Theodore Kadet on  
17 December 9, 2019, January 30, 2020, and February 4, 2020. Dkt. No. 16-16 at 25. Dr. Kadet found  
18 that Goodman suffered weaknesses in ocular motility, with two of the four “visually-based skills  
19 critical to reading fluency” measuring at the third grade performance level, one skill measuring at  
20 the fifth grade level, and the final one measuring at the college level. *Id.* at 27. Goodman’s grade  
21 level efficiency score measured at a third grade level. *Id.* Dr. Kadet also found that Goodman  
22 suffered from convergence insufficiency and that the condition was “contributing to the Overall  
23 Reading Difficulties, Dizziness, and Visual Short Term Memory losses” he identified. *Id.* at 28.  
24 Dr. Kadet concluded that “[o]n a more probably than not basis,” the convergence insufficiency

1 was a result of “Cranial Nerve III dysfunction, a result of Diffuse Axonal Injury and shearing of  
2 capillaries from branches off of the Basilar Artery to the Cranial Nerve III nuclei – a sequela of  
3 coup-contrecoup shaking of brain and other tissue inside the skull” at the time of Goodman’s  
4 accident. *Id.* Dr. Kadet also conducted a “Visual Evoked Potential (VEP)” test, which “is  
5 performed to assess neurological integrity and function between the retina of the eye and the visual  
6 cortex of the brain.” *Id.* at 29. Dr. Kadet’s findings from the test were “highly suggestive of  
7 neurological damage to the visual mechanism.” *Id.* Dr. Kadet recommended “Neuro-Optometric  
8 Rehabilitation/Vision Therapy” to restore normal binocular function and estimated that the vision  
9 therapy would take about eight to eleven months. *Id.* Dr. Kadet concluded that the convergence  
10 insufficiency, reading difficulties, ocular motility dysfunctions, and other visual losses were  
11 “caused on a more probably than not basis” by the accident. *Id.* at 30. He also believed that  
12 Goodman’s condition could be successfully treated with vision therapy. *Id.*

13 **E. Unum’s Termination of Benefits and Goodman’s Appeal**

14 (18) On September 10, 2019, Unum sent Goodman a letter stating that it had determined  
15 that she was subject to the policy limitations for mental health conditions, which limited her to a  
16 maximum of 24 months of benefits. Dkt. No. 16-13 at 44; *see* Dkt. No. 18-11 at 22. Unum informed  
17 Goodman that her current benefits would reach their “maximum duration” on November 28, 2020.  
18 Dkt. No. 16-13 at 44. It identified her as having “symptoms of significant Anxiety and Depression”  
19 and stated that “the reported severity of [her] symptoms warrant[ed] a psychiatric evaluation to  
20 consider appropriate psychotropic medication” as well as weekly cognitive behavioral  
21 psychotherapy. *Id.* Based on Dr. Glishy’s records, it affirmed the onset of Goodman’s symptoms  
22 as May 31, 2018, her last day of work. *Id.* Unum found her prognosis for improvement to a level  
23 that would allow her to return to work within six to nine months to be “fair-good” with regular and  
24 appropriate treatment. *Id.* Unum also found that Goodman’s care was “not meeting the standards

1 of the policy,” and directed her to schedule an appointment with a psychiatrist and a  
 2 psychotherapist within 45 days of the letter. *Id.* at 44–45. It explained that if she did not comply,  
 3 she would not be meeting the standard of care required by the policy and it would result in the  
 4 closure of her claim. *Id.* at 45.

5       (19) Unum continued its investigation of Goodman’s claim by contacting her medical  
 6 providers to assess her disability. It sent questionnaires to Dr. Fishel and Dr. Kadet asking whether  
 7 Goodman could perform certain occupational demands. On March 11, 2020, Unum sent a  
 8 questionnaire to Dr. Kadet asking if Goodman could fulfill the following demands: “[l]ifting,  
 9 carrying, pushing, pulling up to 10 pounds occasionally, mostly sitting, standing or walking for  
 10 brief periods of time, the ability to interact with the public, make judgments and decisions, plan  
 11 the activities of others, and supervise staff.” Dkt. No. 16-16 at 59. Dr. Kadet wrote that he was  
 12 “not qualified to provide the response below.” *Id.* On March 11, 2020 and August 7, 2020, it sent  
 13 a similar questionnaire to Dr. Fishel. Dkt. No. 16-16 at 51; Dkt. No. 16-23 at 46. In his response  
 14 to the March 2020 questionnaire, Dr. Fishel stated that Goodman could not perform the above  
 15 occupational demands on a full-time basis due to “dizziness related to her [traumatic brain injury]”  
 16 and that he would reassess in six months. Dkt. No. 16-16 at 55. Dr. Fishel later opined that, as of  
 17 August 7, 2020, Goodman was able to fulfill the following demands on a full-time basis: “[l]ifting,  
 18 carrying, pushing, and pulling 10 pounds occasionally, mostly sitting, and standing or walking for  
 19 brief periods of time.” Dkt. No. 16-23 at 46. Dr. Fishel confirmed in a follow-up questionnaire on  
 20 December 14, 2020 that nothing had changed since his prior response in August 2020. Dkt. No.  
 21 17-13 at 44.

22       (20) On December 16, 2020, Unum found that Goodman was no longer disabled and ceased  
 23 paying her LTD benefits. Dkt. No. 17-6 at 11. Unum based its denial on reports from medical  
 24 consultants Dr. Andrea Brown and Dr. Jamie Lewis, who reviewed the medical information in

1 Goodman's file. *See* Dkt. No. 17 at 53–55 (Brown Report), 58–60 (Lewis Review); Dkt. No. 17-  
 2 5 at 78–80 (Brown Addendum), 83–84 (Second Lewis Review). On November 6, 2020, Dr. Brown  
 3 issued a report stating that “[w]ithin a reasonable degree of medical certainty, the sum of the  
 4 available medical information” did not support Goodman’s lack of “full-time sustained functional  
 5 capacity to perform her own occupational demands.” Dkt. No. 17 at 54. After reviewing additional  
 6 information in Goodman’s file, Dr. Brown reaffirmed that conclusion on December 9, 2020.; Dkt.  
 7 No. 17-5 at 79. The occupational demands Dr. Brown considered included: “occasional exertion  
 8 up to 10 pounds; mostly sitting with brief periods of standing or walking; frequent near visual  
 9 acuity; occasional color vision; interacting with the public; making judgments and decisions;  
 10 planning the activities of others; and supervising staff.” *Id.*; Dkt. No. 17 at 54. Dr. Brown opined  
 11 that:

12 Claimant’s activities are consistent with an ability to perform the physical, visual  
 13 and cognitive occupational demands outlined above. Claimant is able to compose  
 14 thoughtful, relevant and grammatically correct social media posts, care for and  
 15 home school her 5-year-old special needs child as a single mom with shared  
 custody, watch movies, use her smart phone to keep in touch with family and  
 friends, do yoga at home, perform ADLs, do some reading, drive, and shop at  
 Trader Joe’s and Costco.

16 Dkt. No. 17 at 54; Dkt. No. 17-5 at 79. Dr. Lewis concurred with Dr. Brown’s November and  
 17 December 2020 findings, noting the “clinical improvement, limited exam and diagnostic findings  
 18 and stable and limited ongoing treatment.” Dkt. No. 17 at 58; Dkt. No. 17-5 at 83.

19 (21) Goodman internally appealed Unum’s termination of her LTD benefits on January 13,  
 20 2021. Dkt. No. 17-6 at 23–24. In support of her appeal, Goodman submitted three new documents  
 21 to Unum: (i) a visual impairment questionnaire in which Dr. Kadet indicated that she could rarely  
 22 perform work activity involving near acuity and had a “fragile visual system,” (ii) a copy of Dr.  
 23 Kadet’s previous visual system evaluation report based on examinations in early 2020, and (iii) an  
 24

1 October 26, 2020 decision by an administrative law judge in the Social Security Administration  
 2 crediting Dr. Kadet's opinion as to her limited reading ability. *Id.* at 26–51.

3 (22) Unum denied Goodman's appeal on May 4, 2021. Dkt. No. 20-11 at 93; Dkt. No. 20-  
 4 12 at 1–14. In denying her appeal, Unum relied on a report from Dr. Scott Norris. Dkt. No. 20-12  
 5 at 5–7; Dkt. No. 20-7 at 37–42. Dr. Norris concluded that the medical records did not support  
 6 Goodman being unable to fulfill her occupation demands on a full-time basis. Dkt. No. 20-7 at 41.  
 7 He acknowledged Goodman's reported symptoms, but asserted that “[c]ontemporaneous  
 8 examination findings were limited and were not [consistent with] the severe level of impairment”  
 9 reported. *Id.* “Diagnostic testing/imaging did not identify structural disease or other pathologic  
 10 conditions” consistent with the “severity of functional loss” Goodman reported, and that  
 11 Goodman's “report of progression in visual disturbance months/years after a minor [motor vehicle  
 12 accident] was not [consistent with] the natural course of [symptoms] and findings following a  
 13 possible mild head injury.” *Id.* at 40, 41. Dr. Norris noted that given the severe visual symptoms  
 14 and only marginal improvement despite protracted visual therapy, “the lack of referral to  
 15 Ophthalmology was not [consistent with] significant clinical or functional concern regarding the  
 16 severity of her visual dysfunction.” *Id.* at 41. Dr. Norris concluded that he did not find support for  
 17 the limitations identified by Dr. Kadet, and that he would attempt to contact Dr. Kadet. *Id.* at 41–  
 18 42. Dr. Norris expressed doubt about Dr. Kadet's reasoning for the following reasons:

19 Dr. Kadet noted that [Goodman] experienced severe convergence insufficiency and  
 20 was unable to maintain convergence over sustained periods of time. In several  
 21 Visual Disability Reports, Dr. Kadet noted severely “receded” near point of  
 22 convergence; however, measurements of convergence (e.g. point of fusion break,  
 23 point of recovery) were rarely documented. . . . I did not find recent documentation  
 24 of near visual acuity. Near point of convergence was “24/30”, or approximately 60–  
 75 cm, (NL < 10 cm). This level of profound convergence dysfunction was  
 inconsistent with [Goodman's] report of participating in multiple visual tasks such  
 as doing paperwork, helping her child w[ith] schoolwork, using a computer, seeing  
 dashboard instruments while driving, and participating in multiple video sessions  
 for Visual Therapy in early to mid-2020. . . . In Aug[ust] 2020, Dr. Kadet noted that

[Goodman] had a “midline shift” on exam, although diagnostic support for consistent functionally significant midline shift was not apparent, based on the insured’s reported activities.

*Id.* at 39. Although Unum sent a letter to Dr. Kadet describing its disagreement with his opinion, he never responded. *Id.* at 44–47.

## CONCLUSIONS OF LAW

### A. Legal Standard

(1) Under de novo review, the plan administrator’s (here, Unum’s) decision receives no deference, and the Court decides for itself whether the claimant is disabled. *Bunger v. Unum Life Ins. Co. of Am.*, 299 F. Supp. 3d 1145, 1157 (W.D. Wash. 2018) (citing *Muniz v. Amec Constr. Mgmt., Inc.*, 623 F.3d 1290, 1295–96 (9th Cir. 2010)); *accord Collier v. Lincoln Life Assurance Co. of Bos.*, 53 F.4th 1180, 1186 (9th Cir. 2022). “In reviewing the administrative record and other admissible evidence, the court evaluates the persuasiveness of each party’s case, which necessarily entails making reasonable inferences where appropriate.” *Anderson v. Liberty Mut. Long Term Disability Plan*, 116 F. Supp. 3d 1228, 1237 (W.D. Wash. 2015) (cleaned up). In this de novo context, the burden of proof is on the claimant—here, Goodman—to prove that she is disabled by a preponderance of the evidence. *Bunger*, 299 F. Supp. 3d at 1157 (citing *Muniz*, 623 F.3d at 1294, and *Armani v. Nw. Mut. Life Ins. Co.*, 840 F.3d 1159, 1162–63 (9th Cir. 2016)).

(2) To make its de novo benefits determination, the Court must conduct a bench trial on the administrative record under Federal Rule of Civil Procedure 52, where it makes factual findings, evaluates credibility, and weighs evidence. *Anderson*, 116 F. Supp. 3d at 1231. Unlike in summary judgment motions under Rule 56, where district courts are tasked with deciding whether there is a genuine issue of material fact, here the Court must decide whether the plaintiff is disabled within the terms of the policy, and “can evaluate the persuasiveness of conflicting testimony and decide which is more likely true.” *Kearney*, 175 F.3d at 1095. In addition, the Court’s review is

1 limited to the evidence that was before the plan administrator except in certain circumstances, such  
 2 as when it is clear that additional evidence is needed to conduct an adequate de novo review.  
 3 *Collier*, 53 F.4th at 1186 (citing *Opeta*, 484 F.3d at 1217; *Mongeluzo*, 46 F.3d at 943).

4 **B. Goodman Is Disabled Under the Plan**

5 (3) The parties dispute whether Goodman is “disabled” as defined by the Plan. Dkt. No.  
 6 31 at 3; Dkt. No. 33 at 14. The Court concludes that she is. Goodman qualifies as disabled under  
 7 the Plan if she is limited from performing the material and substantial duties of her regular  
 8 occupation due to sickness or injury. Dkt. No. 18-11 at 16. Goodman held an executive  
 9 management role that would typically require frequent and prolonged visual tasks such as  
 10 reading, writing, and computer use. Unum agreed that the role required “frequent near acuity.”  
 11 Dkt. No. 17 at 15. Such a role also has high cognitive demands: it is skilled work requiring the  
 12 ability to interact with the public, make judgments and decisions, plan the activities of others,  
 13 and supervise staff.” *Id.*

14 (4) The record reflects that Goodman is unable to exercise frequent near acuity vision on a  
 15 full-time basis, as would typically be required of someone in her role. From the first days after her  
 16 accident, Goodman reported vision difficulties. *See* Dkt. No. 16-3 at 4, 49, 64 (reporting dizziness  
 17 and blurred vision at provider’s visits in the first week after the accident). At her emergency room  
 18 visit, she was assessed with post-concussive syndrome symptoms. *Id.* at 64. On February 19, 2018,  
 19 just over a month after the accident, Dr. Barker diagnosed Goodman with severe convergence  
 20 insufficiency, intermittent alternating exotropia, reduced depth perception, accommodative  
 21 insufficiency, and astigmatism. Dkt. No. 16-2 at 41. Dr. Barker stated that her “visual deficits  
 22 [were] severely impacted.” *Id.*

23 (5) Goodman’s reports of visual symptoms remained consistent thereafter, as did her  
 24 providers diagnoses of visual impairment. This contradicts Unum’s suggestion that Goodman’s

1 medical history is one of progressive deterioration over time. *See* Dkt. No. 31 at 16–17. In March  
2 2018, she reported dizziness and blurred vision to Dr. Fishel. Dkt. No. 16-3 at 49. In September  
3 2019, the Community Safety Evaluation at Evergreen Hospital found that she had “visual  
4 perceptual impairment.” Dkt. No. 16-15 at 22. In late 2019 and early 2020, Dr. Kadet evaluated  
5 Goodman for visual disability and found that she continued to suffer from convergence  
6 insufficiency, ocular motility dysfunction, and reading difficulties, and that these difficulties were  
7 more likely than not caused by the accident. Dkt. No. 16-16 at 30. In the report submitted with  
8 Goodman’s internal appeal, Dr. Kadet again opined that Goodman had a “fragile visual system”  
9 and that she could rarely perform work activity involving near acuity. Dkt. No. 17-6 at 27, 28.  
10 “Subjective complaints of disabling conditions are not merely evidence of a disability, but are an  
11 important factor to be considered in determining disability.” *Bigham v. Liberty Life Assurance Co.*  
12 *of Boston*, 148 F.Supp.3d 1159, 1167 (W.D. Wash. 2015) (alteration omitted) (quoting *Miles v.*  
13 *Principal Life Ins. Co.*, 720 F.3d 472, 486 (2d Cir. 2013)); *see id.* (“[S]ubjective symptoms have  
14 been found in previous cases to be valuable evidence for a disability claim.”).

15 (6) Unum contends that “updated medical information” prompted it to reevaluate  
16 Goodman’s eligibility for ongoing LTD benefits, Dkt. No. 31 at 10, but the record evidence does  
17 not support Unum’s position. To cast doubt on Goodman’s claim, Unum relies heavily on the  
18 questionnaire responses provided by Dr. Fishel and Dr. Kadet in March and August 2020.  
19 However, the responses do not show what Unum claims. The August 7, 2020 questionnaire to Dr.  
20 Fishel asked whether Goodman was able to fulfill the following occupational demands: “[l]ifting,  
21 carrying, pushing, and pulling 10 pounds occasionally, mostly sitting, and standing or walking for  
22 brief periods of time.” Dkt No. 16-23 at 46. Notably absent from this list is any inquiry into  
23 Goodman’s ability to exercise frequent near visual acuity or to perform cognitively demanding  
24 management tasks, even though Unum itself had identified these as job requirements. *See* Dkt. No.

1 17 at 15; Dkt. No. 17-6 at 12. “As many courts have noted, some sedentary occupations simply  
2 require much higher cognitive functioning levels than others.” *Brown v. Unum Life Ins. Co. of*  
3 *Am.*, 356 F. Supp. 3d 949, 968 n.18 (C.D. Cal. 2019) (collecting cases). Given the absence of those  
4 items from the list, Dr. Fishel’s questionnaire response does not contradict Dr. Kadet’s responses  
5 as Unum claims. *See* Dkt. No. 31 at 15 (“Dr. Kadet’s inconsistency with Dr. Fishel is particularly  
6 significant.”). Dr. Fishel’s later response on December 14, 2020 merely confirmed that nothing  
7 had changed since his last response, and thus does not provide any additional support for Unum’s  
8 position. Dkt. No. 17-13 at 44.

9 (7) In addition to the questionnaire responses from Dr. Fishel and Dr. Kadet, Unum argues  
10 that Dr. Glisky opined that Goodman could return to work on July 1, 2018, and “never revised that  
11 opinion.” Dkt No. 31 at 10. To the contrary, in the June 2019 neuropsychological evaluation, Dr.  
12 Glisky recommended that Goodman “not return to her previous level of occupation functioning”  
13 because her “cognitive, physical, and emotional symptoms will make it very difficult for her to  
14 successfully perform her job, and the stress will not be good for her continued recovery.” Dkt. No.  
15 16-11 at 6. Dr. Glisky recommended at that time that Goodman take another three to six months  
16 of leave and return for a follow-up evaluation. *Id.*

17 (8) After deciding that Goodman’s entitlement to LTD benefits was ripe for reevaluation,  
18 Unum solicited reports from Dr. Brown and Dr. Lewis, who opined that Goodman’s disability was  
19 not supported by the medical records. *See* Dkt. No. 17 at 53–55 (Brown Report), 58–60 (Lewis  
20 Review); Dkt. No. 17-5 at 78–80 (Brown Addendum), 83–84 (Second Lewis Review). Neither Dr.  
21 Brown nor Dr. Lewis examined Goodman personally; rather, to reach their conclusions, both relied  
22 heavily on the questionnaire responses already discussed and on the belief that Goodman’s out-of-  
23 work activities were inconsistent with her diagnoses and reported symptoms. Specifically, Dr.  
24 Brown found that:

1       Claimant is able to compose thoughtful, relevant and grammatically correct social  
 2 media posts, care for and home school her 5-year-old special needs child as a single  
 3 mom with shared custody, watch movies, use her smart phone to keep in touch with  
 family and friends, do yoga at home, perform ADLs, do some reading, drive, and  
 shop at Trader Joe's and Costco.

4 Dkt. No. 17 at 54. Unum's reliance on a "purer paper" review of Goodman's medical condition is  
 5 minimally persuasive. *See Chapin v. Prudential Ins. Co. of Am.*, No. 2:19-CV-01256-RAJ, 2021  
 6 WL 1090749, at \*9 (W.D. Wash. Mar. 22, 2021); *Reetz v. Hartford Life & Accident Ins. Co.*, 294  
 7 F. Supp. 3d 1068, 1083 (W.D. Wash. 2018). In addition, the activities Dr. Brown describes  
 8 establish that Goodman is not bedridden, but there is a significant gap between those activities and  
 9 the demands of Goodman's full-time job. Goodman's ability to perform these activities does not  
 10 demonstrate that she is able to perform the demands of her position on a full-time basis. *See Demer*  
 11 *v. IBM Corp. LTD Plan*, 835 F.3d 893, 906 (9th Cir. 2016) (activities of daily living do not  
 12 "necessarily establish an ability to work within the meaning of the Plan"). Reiterating this  
 13 argument, Unum references one of Goodman's social media posts from April 6, 2020 to cast doubt  
 14 on Dr. Kadet's findings that her reading and writing skills were at an elementary school level, Dkt.  
 15 No. 31 at 18, but Unum provides no evidence about how Goodman's social media posts were  
 16 composed, whether she had assistance, or how much difficulty she faced in putting them together.  
 17 In the absence of such evidence connecting the social media posts to Goodman's actual  
 18 occupational abilities, the posts themselves have limited evidentiary value. *See, e.g., Holmgren v.*  
 19 *Sun Life & Health Ins. Co.*, 354 F. Supp. 3d 1018, 1033 (N.D. Cal. 2018) (rejecting insurer's  
 20 argument that "social media activity is evidence of cognitive ability").

21       (9) In the wake of Goodman's appeal, Unum solicited the opinion of Dr. Norris, who found  
 22 that Dr. Kadet's report lacked credibility because of certain inconsistencies in the medical record.  
 23 Specifically, Dr. Norris found that the severity of the visual symptoms was inconsistent with  
 24 Goodman's ability to perform various daily tasks, with her normal MRI results in March 2018,

1 and with Dr. Kadet’s failure to refer her to an ophthalmologist. Dkt. No. 20-7 at 39, 41 (referencing  
2 Goodman’s “report of doing paperwork, helping her child w[ith] schoolwork, using a computer,  
3 seeing dashboard instruments while driving, and participating in multiple video sessions for Visual  
4 Therapy”). As with Dr. Brown’s opinion, the evidence cited in Dr. Norris’s opinion showing that  
5 Goodman was apparently able to complete various tasks of daily living does not establish that she  
6 was able to perform the evidently more demanding tasks required for full-time employment  
7 involving frequent near acuity. As for Dr. Kadet’s failure to refer Goodman to an ophthalmologist,  
8 Dr. Kadet clearly indicated in his report that he believed neuro-optometric rehabilitation/vision  
9 therapy was the “treatment of choice.” Dkt. No. 16-6 at 29. Given that Dr. Kadet had identified an  
10 appropriate treatment recommendation, and that he believed the “condition [could] be successfully  
11 treated” using that treatment, *id.* at 30, it makes sense that Dr. Kadet did not find further referrals  
12 to be necessary. And it is true that Goodman’s MRIs in March 2018 did not find nerve damage,  
13 but this does not invalidate Goodman’s consistent reports of visual symptoms, and Dr. Kadet’s  
14 report offers the best explanation of those symptoms consistent with the medical evidence. *See*  
15 *Anderson*, 116 F.Supp.3d at 1238 (“Vertigo, fatigue, and nausea are subjective experiences that  
16 cannot be easily measured by an objective standard, but that does not mean such symptoms should  
17 be discounted or disbelieved.”).

18 (10) Unum proposes an alternative explanation for Goodman’s reported symptoms: it  
19 contends that her disability was a mental illness, and that her subjectively reported symptoms are  
20 unreliable. *See* Dkt. No. 31 at 18–20 (questioning Goodman’s reliability); Dkt. No. 42 at 9 (“Dr.  
21 Kadet failed to consider whether any limitations Plaintiff experienced in December 2020 were due  
22 to Plaintiff’s diagnosed mental illness.”). The evidence does establish that Goodman suffered from  
23 mental illness concomitant to her visual symptoms. *See* Dkt. No. 16-11 at 5 (diagnosing Goodman  
24 with Unspecified Neurocognitive Disorder, Unspecified Depressive Disorder, and Unspecified

1 Anxiety Disorder). The record also establishes that Goodman's reported symptoms were variable  
 2 and sometimes inconsistent with the medical evidence. *See, e.g.*, Dkt. No. 17 at 43, 44 (finding by  
 3 the ALJ ruling on Goodman's 2019 SSA disability application that “[t]he claimaint's activities are  
 4 not entirely consistent with her allegations” and that she gave “inconsistent testimony regarding  
 5 driving and vision problems”). Goodman's inconsistent reports may stem from the mental illnesses  
 6 that afflicted her over the benefits period. However, the inconsistencies in Goodman's reporting  
 7 of her symptoms are not so great as to suggest that her symptoms were trivial or nonexistent. In  
 8 fact, the ALJ who considered Goodman's 2019 social security disability benefits claim made  
 9 extensive note of those inconsistencies, but ultimately found that the “medical evidence is partially  
 10 consistent with the claimant's allegations,” and that it “suggests limitations, but does not reflect  
 11 [the] level of functional restriction alleged by the claimant.” *Id.* at 41. The ALJ ultimately found  
 12 that Goodman was “unable to perform past relevant work as actually or generally performed.”<sup>1</sup> *Id.*  
 13 at 45. Unum also surmises that Goodman's self-treatment with unorthodox remedies such as  
 14 unprescribed drugs and a hyperbaric chamber may have contributed to her symptoms, Dkt. No. 39  
 15 at 6, but it does not submit any medical evidence indicating that her symptoms could be caused by  
 16 such treatments.

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19           <sup>1</sup> Unum argues that the Court should discount the October 26, 2020 SSA decision because this Court overturned its  
 20 finding that Goodman “cannot work in a job that requires more than occasional reading or reading above a 5<sup>th</sup> grade  
 21 level.” *See* Dkt. No. 39 at 13. However, the Court took issue with that portion of the decision, at least in part, in  
 22 response to Goodman's argument that “the ALJ erred in finding that Dr. Kadet limited [her] to fifth-grade reading,  
 23 when Dr. Kadet clearly indicated that she was limited to third-grade reading.” *Tanya G. v. Comm'r of Social Security*,  
 24 C21-0530-SKV, 2022 WL 35494, at \*3 (W.D. Wash. Jan. 3, 2022). The Court ultimately found that “Dr. Kadet's  
 opinion does not clearly define Plaintiff's overall reading ability. Dr. Kadet summarized variable test results as to  
 reading fluency, reading speed, and reading efficiency, but did not opine as to Plaintiff's overall reading level for  
 purposes of vocational functioning.” The Court thus concluded that “there is no clear basis for boiling down Dr.  
 Kadet's report into an opinion that Plaintiff could read at the fifth-grade level.” *Id.* The Court further notes that in June  
 2022, the SSA found that Goodman was totally disabled under its standard for determining disability. *See* Dkt. No.  
 34-4 at 11.

(11) Unum further argues that Goodman failed to obtain regular care for her disability, as required by the Plan language. *See* Dkt. No. 31 at 20–21; Dkt. No. 18-11 at 16, 31. Under this “regular care” requirement, Goodman was required to (i) “personally visit a physician as frequently as is medically required, according to generally accepted medical standards, to effectively manage and treat [her] disabling condition,” and (ii) receive “the most appropriate treatment and care which conforms with generally accepted medical standards” for her condition. Dkt. No. 18-11 at 31. The record reflects that Unum communicated to Goodman its belief that she was not complying with the regular care requirement, but it only did so with respect to regular care for Goodman’s mental health. *See* Dkt. No. 16-13 at 44–45. Unum did not notify Goodman that it believed she was failing to receive regular care for her visual symptoms. In fact, Goodman’s course of treatment reflects more regular medical care than courts have typically found to violate similar requirements in ERISA plans. *See, e.g., Eichacker v. Paul Revere Life Ins. Co.*, 354 F.3d 1142, 1148 (9th Cir. 2004) (claimant meets a regular care requirement when they make “good faith efforts to seek care in the aftermath of the accident,” but not when they fail to receive “any physician’s care whatsoever during the period in dispute”).

(12) The Court concludes that Goodman has established by a preponderance of evidence that she was disabled under the terms of the Plan at least through December 16, 2020, when Unum terminated her LTD benefits. This determination is based on the Plan’s definition of disabled under the “regular occupation” standard. However, Unum terminated Goodman’s benefits under the “mental illness” 24-month limitation and has never made a determination regarding whether Goodman meets the more stringent standard that the Plan imposes for continuing to pay disability benefits beyond 24 months, at which point a Plan participant is disabled only if they are “unable to perform the duties of *any gainful occupation* for which [the participant] is reasonably fitted by education, training or experience.” Dkt. No. 18-11 at 16 (emphasis added); *see* Dkt. No. 31 at 3

1 n.5. Therefore, the Court remands the case to Unum to determine whether it is required to extend  
 2 benefits to Goodman beyond the 24-month period in which the “regular occupation” standard  
 3 applies. *See, e.g., Anderson*, 116 F.Supp.3d at 1239.

4 **C. Claim for Breach of Fiduciary Duty and Injunctive Relief**

5 (13) Goodman is not entitled to judgment on the record for her claim for breach of fiduciary  
 6 duty under 29 U.S.C. § 1132(a)(3). Section 1132(a)(3) is a “‘catchall’ provision to offer  
 7 appropriate equitable relief for injuries that § 1132 does not otherwise remedy.” *Wit v. United*  
 8 *Behavioral Health*, No. 20-17363, 2023 WL 411441, at \*9 (9th Cir. Jan. 26, 2023) (citing *Varsity*  
 9 *Corp. v. Howe*, 516 U.S. 489, 511–12, 515 (1996)). The Ninth Circuit has held that “a claimant  
 10 may not bring a claim for denial of benefits under § 1132(a)(3) when a claim under § 1132(a)(1)(B)  
 11 will afford adequate relief.” *Castillo v. Metro. Life Ins. Co.*, 970 F.3d 1224, 1229 (9th Cir. 2020).  
 12 Goodman argues that Unum engaged in misconduct in violation of its fiduciary duties in two ways:  
 13 (i) by arbitrarily disregarding her treating doctors’ opinions, and (ii) ignoring SSA findings of  
 14 disability, and requests an injunction ordering Unum personnel to “undergo[] re-training to comply  
 15 with the requirements of ERISA to consider treating providers’ opinions and SSA disability  
 16 determinations.” Dkt. No. 33 at 22, 24.

17 (14) To the extent Goodman’s breach of fiduciary duty claim is not subsumed by her claim  
 18 for a denial of benefits under § 1132(a)(1)(B), the Court denies her request for an injunction. For  
 19 the reasons explained above, the Court does not find Unum’s position regarding Goodman’s  
 20 disability persuasive in the final instance. However, the record reflects that Unum had a reasoned  
 21 basis for its rejection of the findings by Goodman’s treating providers and the SSA in the reports  
 22 by Dr. Brown, Dr. Lewis, and Dr. Norris. *See* Dkt. No. 17 at 53–55 (Brown Report), 58–60 (Lewis  
 23 Review); Dkt. No. 17-5 at 78–80 (Brown Addendum), 83–84 (Second Lewis Review); Dkt. No.  
 24 20-7 at 37–42 (Norris Report). Goodman’s (and the Court’s) disagreement with Unum’s

1 conclusions does not establish that Unum arbitrarily ignored that evidence. The Court thus denies  
2 Goodman's claim for breach of fiduciary duty under 29 U.S.C. § 1132(a)(3). *Cf. Abrams v. Unum*  
3 *Life Ins. Co. of Am.*, No. C21-0980-TSZ, 2022 WL 17960616, at \*5 (W.D. Wash. Dec. 27, 2022)  
4 ("Because multiple relevant pieces of evidence in this case support Defendant's denial, the Court  
5 concludes that Defendant did not act in bad faith.").

6 **CONCLUSION**

7 For the foregoing reasons, the Court GRANTS IN PART Goodman's motion for judgment  
8 on the record, GRANTS Goodman's motion to supplement the record, and DENIES IN PART  
9 Unum's motion for judgment on the record. The case is REMANDED to Unum to determine  
10 whether it is required to extend benefits to Goodman beyond the 24-month period in which the  
11 "regular occupation" standard applies.

12 Dated this 3rd day of May 2023.

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Barbara Jacobs Rothstein  
United States District Judge

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